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6 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

7 TARA CASH,

8 Plaintiff,

Case No. C18-520 JCC

9 v.

10 NANCY A. BERRYHILL, Deputy
11 Commissioner of Social Security for Operations,

12 Defendant.

ORDER REVERSING AND
REMANDING THE CASE FOR
FURTHER ADMINISTRATIVE
PROCEEDINGS

13 Plaintiff seeks review of the denial of her applications for Supplemental Security Income
14 and Disability Insurance Benefits. Plaintiff contends the ALJ erred by discounting the opinions
15 of every doctor and treating provider in the record, and requests the Court remand the case for
16 further administrative proceedings. Dkt. 9. As discussed below, the Court REVERSES the
17 Commissioner's final decision and REMANDS the matter for further administrative proceedings
18 under sentence four of 42 U.S.C. § 405(g).

19 I. BACKGROUND

20 Plaintiff is currently 44 years old, has a high school education, and has worked as a
21 cashier, general clerk, and park aide. Administrative Record (AR) 33. On December 29, 2015,
22 plaintiff applied for benefits. AR 85. She alleges disability as of the application date. AR 24.
23 Plaintiff's applications were denied initially and on reconsideration. AR 83, 84, 112, 113. After

ORDER REVERSING AND REMANDING
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ADMINISTRATIVE PROCEEDINGS - 1

1 the ALJ conducted a hearing on October 11, 2017, the ALJ issued a decision finding plaintiff not
2 disabled. AR 41, 24-35.

3 II. THE ALJ'S DECISION

4 Utilizing the five-step disability evaluation process,¹ the ALJ found:

5 **Step one:** Plaintiff has not engaged in substantial gainful activity since the December
6 2015 alleged onset date.

7 **Step two:** Plaintiff has the following severe impairments: borderline personality
8 disorder, post-traumatic stress disorder (PTSD), depressive disorder.

9 **Step three:** These impairments do not meet or equal the requirements of a listed
10 impairment.²

11 **Residual Functional Capacity:** Plaintiff can perform work at all exertional levels. She
12 is limited to simple, routine, repetitive tasks, with brief or occasional and superficial
13 interaction with the public.

14 **Step four:** Plaintiff cannot perform past relevant work.

15 **Step five:** As there are jobs that exist in significant numbers in the national economy that
16 plaintiff can perform, she is not disabled.

17 AR 26-34. The Appeals Council denied plaintiff's request for review, making the ALJ's
18 decision the Commissioner's final decision. AR 1-4.

19 III. DISCUSSION

20 This Court may set aside the Commissioner's denial of social security benefits only if the
21 ALJ's decision is based on legal error or not supported by substantial evidence in the record as a
22 whole. *Trevizo v. Berryhill*, 871 F.3d 664, 674 (9th Cir. 2017). Each of an ALJ's findings must
23 be supported by substantial evidence. *Reddick v. Chater*, 157 F.3d 715, 721 (9th Cir. 1998).

"Substantial evidence" is more than a scintilla, less than a preponderance, and is such relevant

¹ 20 C.F.R. §§ 404.1520, 416.920.

² 20 C.F.R. Part 404, Subpart P. Appendix 1.

1 evidence as a reasonable mind might accept as adequate to support a conclusion. *Richardson v.*
2 *Perales*, 402 U.S. 389, 401 (1971); *Magallanes v. Bowen*, 881 F.2d 747, 750 (9th Cir. 1989).

3 The ALJ is responsible for determining credibility, resolving conflicts in medical testimony, and
4 resolving any other ambiguities that might exist. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th
5 Cir. 1995). While the Court is required to examine the record as a whole, it may neither reweigh
6 the evidence nor substitute its judgment for that of the Commissioner. *Thomas v. Barnhart*, 278
7 F.3d 947, 954 (9th Cir. 2002). When the evidence is susceptible to more than one interpretation,
8 the Commissioner’s interpretation must be upheld if rational. *Burch v. Barnhart*, 400 F.3d 676,
9 680-81 (9th Cir. 2005).

10 Plaintiff contends the ALJ erred by discounting, or failing to incorporate into the RFC,
11 the opinions of every treating, examining, and nonexamining medical source. Dkt. 9.

12 A treating physician’s opinion is entitled to greater weight than an examining physician’s
13 opinion, and an examining physician’s opinion is entitled to greater weight than a nonexamining
14 physician’s opinion. *Garrison v. Colvin*, 759 F.3d 995, 1012 (9th Cir. 2014). An ALJ may only
15 reject the uncontradicted opinion of a treating or examining doctor by giving “clear and
16 convincing” reasons. *Revels v. Berryhill*, 874 F.3d 648, 654 (9th Cir. 2017). Even if a treating
17 or examining doctor’s opinion is contradicted by another doctor’s opinion, an ALJ may only
18 reject it by stating “specific and legitimate” reasons. *Id.* The ALJ can meet this standard by
19 providing “a detailed and thorough summary of the facts and conflicting clinical evidence,
20 stating his interpretation thereof, and making findings.” *Id.* (citation omitted). “The ALJ must
21 do more than offer his conclusions. He must set forth his own interpretations and explain why
22 they, rather than the doctors’, are correct.” *Reddick*, 157 F.3d at 725.

1 **A. Denise Sterchi, LICSW**

2 “Only physicians and certain other qualified specialists are considered ‘[a]cceptable
3 medical sources.’” *Ghanim v. Colvin*, 763 F.3d 1154, 1161 (9th Cir. 2014) (alteration in
4 original); *see* 20 C.F.R. §§ 404.1502(a), (d), (e); 416.902(a), (i), (j). An ALJ may reject the
5 opinion of a non-acceptable medical source, such as a therapist, by giving reasons germane to the
6 opinion. *Ghanim*, 763 F.3d at 1161.

7 Denise Sterchi, LICSW, has been plaintiff’s treating mental health provider since March
8 2015. AR 965. She wrote in a letter to the state Division of Vocational Rehabilitation (DVR)
9 that plaintiff had “dissociative episodes” almost daily where she “loses attention and is easily
10 distracted from even simple tasks such as cooking a meal. Needless to say, this will be
11 problematical in most work settings. ... She is extremely distrustful of other people [which]
12 often manifests as anger and leaving the situation.” AR 431. Ms. Sterchi also provided a
13 medical source statement in July 2017. AR 965-70. Ms. Sterchi opined that plaintiff would have
14 daily problems with staying on task for two-hour intervals and would be absent from work more
15 than once a week due to “episodes of dissociation.” AR 966-67. If required to work full time,
16 plaintiff would be unable to work in coordination with or proximity to others at least 20% of the
17 time, interact appropriately with the public, or respond appropriately to criticism from
18 supervisors. AR 968. When under stress, plaintiff would have socially unacceptable “anger
19 outbursts” at work. AR 968. Plaintiff would cease to be able to function effectively if required
20 to get to work at a particular time, perform even simple repetitive tasks, or be supervised. AR
21 969. Ms. Sterchi also testified at the October 2017 hearing. Ms. Sterchi observes dissociation
22 “from the look in their eyes, ... there’s this guardedness, [a] sort of blank milkiness
23 sometimes....” AR 68. Because her treatment of plaintiff involves bringing up traumatic

1 memories, plaintiff “appears to be in a somewhat disassociated state much of the time.” *Id.* Ms.
2 Sterchi testified that, according to current research, dissociative episodes are triggered by “a
3 trauma memory” and cause a flood of endogenous opioids, essentially “sedat[ing]” the person
4 “to cope with the distress....” *Id.* In that state, a person “can’t think straight, ... can’t,
5 sometimes, do simple tasks, remember instructions for simple tasks.” *Id.* “[J]ust asking her to
6 ... do something can, at times, trigger the disassociation....” AR 69.

7 Before Ms. Sterchi testified at the hearing, the ALJ asked plaintiff’s counsel to “please be
8 brief because ... this is not an acceptable medical source. I know they have their heart in the
9 right place, but I don’t really find I give much weight to therapists.” AR 66. Plaintiff asserts that
10 “[t]his comment was improper.” Dkt 9 at 13. Plaintiff implies that the ALJ discounted Ms.
11 Sterchi’s opinions in part because she is not an acceptable medical source, but that was not one
12 of the reasons the ALJ provided in his decision. *See* AR 31. Plaintiff does not otherwise argue
13 that the ALJ’s comment establishes reversible error, and the Court will not address it further.
14 *See Carmickle v. Comm’r, Soc. Sec. Admin.*, 533 F.3d 1155, 1161 n.2 (9th Cir. 2008) (declining
15 to address an issue not argued with any specificity in briefing).

16 The ALJ gave Ms. Sterchi’s opinions “little weight” as inconsistent with plaintiff’s
17 activities because plaintiff did not dissociate when interacting with vocational service providers,³
18 and plaintiff worked as a dog-walker for several weeks, not two or three days as Ms. Sterchi
19 testified. AR 31. Conflict with a claimant’s activities “may justify rejecting a treating provider’s
20 opinion.” *Ghanim*, 763 F.3d at 1162.

21
22 ³ The ALJ added: “Rather than dissociating, the claimant expressed desire to commit to a 2-year
23 training program to be a chi gong instructor.” AR 31. This does not appear to be an additional
reason, and the Commissioner does not address it in her brief. *See* Dkt. 12 at 4-5. The Court
will not address it further.

1 1. Dissociation

2 The ALJ found that plaintiff's file from the state Division of Vocational Rehabilitation
3 (DVR) "document[ed] a consistent stream of courteous and effective communication between
4 the claimant and her case managers." AR 29-30. These courteous communications are emails,
5 which are not face-to-face interactions where dissociation would even be detectable. *See, e.g.*,
6 AR 355, 368, 375-76. It is worth noting that in plaintiff's intake meeting, her case manager
7 described her as "guarded" and, in a later meeting, observed that plaintiff "appeared quite
8 overwhelmed" during a discussion of community college programs. AR 390. These
9 descriptions are consistent with Ms. Sterchi's testimony. The DVR records do not contradict
10 Ms. Sterchi's opinions and are not a germane reason to discount them.

11 2. Dog Walking

12 At the hearing, Ms. Sterchi was aware of plaintiff's attempt to work part-time as a dog
13 walker and testified "I think she only lasted two or three days." AR 69-70. Plaintiff testified that
14 the job was for two or three hours, about three days a week. AR 49. Asked how long the job
15 lasted, plaintiff testified "I think I stretched it out to like three or four weeks because I said I was
16 out of town and gave some excuses for why I couldn't go. I was trying to get myself back
17 together so I could keep working." AR 49. In other words, while plaintiff may have been
18 considered an employee for three or four weeks, she did not go to work for much of that time.
19 Plaintiff's dog-walking activities thus do not contradict Ms. Sterchi's opinions and are not a
20 germane reason to discount them. In any case, whether plaintiff's work attempt failed after three
21 days or three weeks, the failed work attempt does not undermine Ms. Sterchi's opinions that
22 plaintiff could not maintain employment. *See Lingenfelter v. Astrue*, 504 F.3d 1028, 1038 (9th
23 Cir. 2007) ("It does not follow from the fact that a claimant tried to work for [nine weeks] and,

1 because of his impairments, *failed*, that he did not then experience [symptoms] and limitations
2 severe enough to preclude him from *maintaining* substantial gainful employment.”).

3 The ALJ provided no germane reason and, accordingly, erred by discounting Ms.
4 Sterchi’s opinions.

5 **B. David Widlan, Ph.D.**

6 After a February 2016 examination, Dr. Widlan opined that plaintiff would have marked,
7 *i.e.*, very significant, limitations in her abilities to adapt to changes in a routine work setting,
8 communicate and perform effectively in a work setting, and complete a normal work day and
9 work week without interruptions from psychologically based symptoms. AR 822. The ALJ
10 gave Dr. Widlan’s opinions “limited weight” as inconsistent with plaintiff’s activities because
11 plaintiff contacted community college programs, regularly attended therapy with Ms. Sterchi,
12 and emailed “proper[ly] and courteous[ly]” with her DVR case managers. AR 31.

13 Contacting community colleges is not an activity inconsistent with Dr. Widlan’s
14 opinions. The ALJ seems to suggest that contacting programs means that plaintiff believed she
15 could complete a program. However, even if Dr. Widlan’s opinions were inconsistent with
16 plaintiff’s *beliefs* about what activities she could successfully engage in, his opinions were not
17 inconsistent with plaintiff’s actual *activities*.

18 The record shows that plaintiff attended therapy with Ms. Sterchi for about 60 minutes
19 once a week. *See* AR 789-812. This is not inconsistent with Dr. Widlan’s opinion that plaintiff
20 was limited in her ability to attend work for eight hours a day, five days a week.

21 Plaintiff’s ability to email with her case managers does not contradict Dr. Widlan’s
22 opinion that plaintiff would be limited in her ability to communicate face-to-face in a work
23 setting.

1 The Commissioner argues that Dr. Widlan's opinions could be rejected because
2 "Plaintiff's vocational rehabilitation case worker thought that she was so functional that she
3 should 'enroll full-time once she begins schooling.'" Dkt. 12 at 2 (quoting AR 390). This (1) is
4 an improper post-hoc argument, (2) misrepresents the record, and (3) is not a specific and
5 legitimate reason to discount Dr. Widlan's opinions. First, the ALJ did not employ such
6 reasoning. Second, the record shows that the vocational rehabilitation counselor "told [plaintiff]
7 that I would ex[pect] her to enroll full-time once she begins schooling." AR 390. There is no
8 indication that such an expectation is based on the counselor's evaluation of plaintiff's
9 functioning. Third, even if it were, the counselor's evaluation, with no supporting evidence and
10 no medical expertise, is not a specific and legitimate reason to discount the conflicting opinions
11 of an acceptable medical source. The Commissioner's argument is not well taken.

12 The ALJ provided no specific and legitimate reason and, accordingly, erred in
13 discounting Dr. Widlan's opinions.

14 **C. Faulder Colby, Ph.D.**

15 Dr. Colby reviewed Dr. Widlan's and Ms. Sterchi's reports and some of plaintiff's
16 medical records. AR 830. Dr. Colby concurred with Dr. Widlan's opined limitations. *Compare*
17 AR 831, 822. The ALJ gave Dr. Colby's opinions "some weight only" because they were based
18 on reports that the ALJ discounted. AR 32. Because the ALJ erred in discounting Dr. Widlan's
19 and Ms. Sterchi's opinions, the ALJ also erred in discounting Dr. Colby's opinions on the
20 grounds that they were based on Dr. Widlan's and Ms. Sterchi's.

21 The Commissioner argues that the ALJ also rejected Dr. Colby's opinions in favor of the
22 opinions of examining doctor M. Liddell, M.D. Dkt. 12 at 4. However, the ALJ did not identify
23 how Dr. Liddell's opinions contradicted Dr. Colby's. In fact, both agreed that plaintiff's

1 impairments would cause limitations in her ability to complete a normal work day and work
2 week. AR 895, 831. Some unspecified conflict with Dr. Liddell's opinions was not a specific
3 and legitimate reason to discount Dr. Colby's opinions.

4 The Court concludes the ALJ erred by discounting Dr. Colby's opinions.

5 **D. M. Liddell, M.D.**

6 After an examination in December 2016, Dr. Liddell opined that plaintiff could "maintain
7 regular attendance in the workplace" but that plaintiff's psychiatric symptoms "would continue
8 to cause limitations in her ability to ... complete a normal workday or workweek without
9 interruptions, or manage usual stress encountered in the workplace[.]" AR 895. The ALJ largely
10 accepted Dr. Liddell's opinions, giving them "appropriate weight," but noted that Dr. Liddell
11 only "limited"—not "precluded"—completing workdays and workweeks and managing usual
12 stress. AR 32. In this respect, Dr. Liddell's opinions are consistent with the other medical
13 opinions in the record. Dr. Widlan and Dr. Colby opined "marked"—meaning "very
14 significant"—limitations on plaintiff's ability to complete a normal work day and work week.
15 AR 821-22, 831. They did not check the boxes for "severe"—meaning an "inability"—to
16 complete a normal work day and work week. *Id.* Dr. Liddell did not opine a specific level of
17 limitation, which makes his opinions less helpful than the others'. But the ALJ was not entitled
18 to ignore the limitation simply because it was not a total preclusion.

19 The Commissioner argues that the ALJ accounted for Dr. Liddell's opinions by limiting
20 plaintiff to simple, routine, repetitive tasks with minimal public interaction. Dkt. 12 at 3. But
21 those limitations do not account for difficulty in completing a normal work day or work week.

22 The Court concludes the ALJ erred by failing to address Dr. Liddell's opined limitations
23 in formulating plaintiff's RFC.

1 **E. Alan Breen, Ph.D.**

2 Dr. Breen completed a “Comprehensive Neuropsychological Evaluation” in June 2016.
3 AR 833. The ALJ determined that Dr. Breen “did not express an opinion on the claimant’s
4 functioning, but instead recommended continued mental-health treatment.” AR 31 (citing AR
5 838-39). Dr. Breen wrote that plaintiff “needs a job that is somewhat lower in demand than her
6 intellectual abilities would predict and not highly paced. ... If she is able to handle about half-
7 time work for a period of time, then looking towards training might be appropriate to enhance
8 her skills.” AR 838. Plaintiff interprets this as Dr. Breen’s opinion that plaintiff was restricted
9 from full-time or highly paced work. Dkt. 9 at 4. However, the context of Dr. Breen’s report is
10 developing a treatment plan, not opining as to plaintiff’s long-term limitations. Before the
11 excerpt that plaintiff cited, Dr. Breen stated: “I think that perhaps the best way of helping her is
12 to first put her to work, see if she can tolerate routine work, and then look towards training.
13 Investing in training before we know she is going to persist at work may not be fruitful.” AR
14 838. In context, Dr. Breen’s statements do not establish limitations on plaintiff’s long-term or
15 permanent abilities. *See* 20 C.F.R. §§ 404.1509, 416.909 (“your impairment ... must have lasted
16 or be expected to last for a continuous period of at least 12 months”). After his proposed
17 treatment was completed, his opinions of plaintiff’s abilities may have changed. The Court
18 concludes the ALJ did not err by failing to address Dr. Breen’s statements as opinions. *See*
19 *Turner v. Comm’r of Soc. Sec. Admin.*, 613 F.3d 1217, 1223 (9th Cir. 2010) (ALJ need not
20 provide reasons for rejecting a doctor’s statements that do not specify work-related functional
21 limitations).

22 **F. State Agency Reviewing Doctors**

23 In considering plaintiff’s applications for benefits initially and on reconsideration, state

1 agency nonexamining doctors Renee Eisenhauer, Ph.D., and Michael Regets, Ph.D., opined that
2 plaintiff “would do best in a stable, low pressure work setting with clear expectations of the work
3 to be performed.” AR 96, 125. The ALJ gave their opinions “significant weight.” AR 32.
4 Plaintiff argues the ALJ erred by failing to include a limitation in the RFC to work that is low
5 pressure with clear expectations. Dkt. 9 at 17. Clear expectations are accounted for by the RFC
6 limitation to “simple routine repetitive tasks....” AR 28. Once the simple, routine tasks have
7 been explained, the expectation is clearly to simply repeat them.

8 The Court concludes the ALJ did not err in incorporating the state agency doctors’
9 opinions into the RFC.

10 IV. CONCLUSION

11 For the foregoing reasons, the Commissioner’s final decision is REVERSED and this
12 case is REMANDED for further administrative proceedings under sentence four of 42 U.S.C. §
13 405(g).

14 On remand, the ALJ should reevaluate the opinions of Ms. Sterchi, Dr. Widlan, Dr.
15 Colby, and Dr. Liddell, reassessing the RFC as appropriate and proceeding to step five as
16 necessary.

17 DATED this 19th day of December, 2018.

18
19 
20 John C. Coughenour
UNITED STATES DISTRICT JUDGE